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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th April 1958/Chaitra 17, 1880 Saka

S.O. 523.—In continuation of Election Commission's notification No. 82/230/57/12792, dated the 2nd December, 1957 published in the *Gazette of India* Part II Section 3, dated the 5th December, 1957, under section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment of the High Court of Judicature for Rajasthan, Jaipur Bench delivered on the 28th February, 1958, on the appeal filed by Shri Durga Prasad, S/o Shri Murli Dhar, Kaiserganj, Ajmer against the order, dated the 12th November, 1957, of the Election Tribunal Ajmer in Election Petition No. 230 of 1957.

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH JUDGMENT

Shri Durga Prasad Chowdhary, Kaiserganj, Ajmer.

Vs.

Shri Mukat Behari Lal Bhargava, Advocate & Shri B. N. Bhargava Vakil,
Hathi Bhata, Ajmer.

D. B. CIVIL MIS. APPEAL NO. 102 OF 1957

against the decision of the Election Tribunal, Ajmer, dated 12th November 1957, in Election Petition No. 230 of 1957.

Decided on 28th February, 1958.

PRESENT

The Hon'ble Mr. Justice K. L. Bapna.

The Hon'ble Mr. Justice D. M. Bhandari.

Mr. V. P. Tyagi
Mr. D. D. Bhargava
Mr. R. C. Jain

} for the appellant.

Mr. D. R. Prem
Mr. B. P. Beri
Mr. B. L. Ranka

} for the respondents.

By the Court (Per Hon. Banna J.).

This is an appeal under section 116A of the Representation of the People Act, 1951.

The petitioner Durga Prasad filed an election petition on 24th April, 1957, under section 81 of the Representation of the People Act (No. XLIII of 1951) (hereinafter to be referred to as "the Act") with the prayer that the election of respondent No. 1, Shri Mukat Behari Lal Bhargava, from the Ajmer Parliamentary constituency, in the General Election held in the months of February-March, 1957, be set aside, and he may be further disqualified along with respondent No. 2, Mr. B. N. Bhargava, to stand for election for a period of six years, and it may also be declared that the respondents have committed corrupt practices. The allegations in the petition were contested by the respondents, and one of the objections raised was that Seth Sobhag Mal Lodha was a necessary party under section 82(b) of the Act, but he was not made a party. It was prayed that the petition should be dismissed under section 90(3) of the Act. On behalf of the petitioner it was submitted that the allegations of corrupt practice were against the respondents to the petition, but not against Seth Sobhagmal Lodha. The Election Tribunal by its order, dated 12th November 1957, held that the facts mentioned in the petition amounted to an allegation of corrupt practice against Seth Sobhagmal Lodha, who was also a candidate at the election, but had subsequently withdrawn himself, and that he was a necessary party under section 82(b) of the Act, and as he was not made a party to the petition, the petition was dismissed in exercise of the powers under section 90(3) of the Act.

The petitioner has filed this appeal on 10th December, 1957, urging that the finding of the learned Election Tribunal was erroneous and should be set aside.

A preliminary objection was raised on behalf of the respondents that the appeal is incompetent. It was urged that the right of appeal was provided under section 116A of the Act, but it was restricted to orders made under section 98. Section 98, according to the respondents, envisages a final order after conclusion of the trial on the merits, that is, after recording evidence in respect of the points in issue between the parties. Learned counsel for the respondents sought support for his argument by reference to section 99 which said that—

"(1) At the time of making an order under section 98, the Tribunal shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed by, or with the consent of, any candidate or his agent at the election and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable, and specifying the persons by and to whom costs shall be paid".

The argument was that if the findings referred to in section 99 have to be made at the time of making an order under section 98 in the present case, the mere dismissal of the petition by reference to section 90(3) would not make such order under section 98 of the Act. The argument further is that the appeal under section 116A is only provided against an order given by the Tribunal on the merits, but not against any dismissal of the petition on a preliminary ground referred to in section 90(3) of the Act. It was urged that the decision of this Court in *Shah Alimuddin v. S. C. Agrawal* (D. B. Civil Misc. Appeal No. 70 of 1957, decided on 12th December, 1957), in which it was held that an order of dismissal of the petition under section 90, sub-section (3) of the Act was nevertheless an order under section 98, as the order of dismissal brought the trial to a conclusion, should be reconsidered, as a contrary opinion has been held in an unreported case of the Patna High Court.

Subsequent to the decision in *Shah Alimuddin v. S. C. Agrawal* on 12th December, 1957, the same question came up for discussion in *Dr. Mangal Singh v. Shri M. M. Lal Atal and Seth Mahendra Singh* (D.B.C. Writ Application No. 166 of 1957, decided on 14th January, 1958) and the question was dealt with in some detail. It may be pointed out that by section 90(1) of the Act, the provisions of the Code of Civil Procedure are made applicable to the trial of election petitions as nearly as may be, as they are applicable to the trial of suits. According to section 33 and Order XX, Rule 1, of the Code of Civil Procedure, a court has to pronounce judgment after the case has been heard i.e. tried. According to the

Code of Civil Procedure a suit can be dismissed under Order X, Rule 4(2), Order XI, Rule 21, Order XV, Rule 4, and Order XVII, Rule 3, for reasons stated in those provisions of the law, before the final hearing after close of trial, but nevertheless the decision will be one under section 33 of the Code. In view of the fact that the provisions of the Code are applicable *mutatis mutandis* to the trial of cases before the Election Tribunal, dismissal of an election petition under the aforesaid provisions of the Code of Civil Procedure can take place, and the decision can only be regarded as one under section 98 of the Act. As held in the judgments of this Court in Shah Alimuddin's case and in Dr. Mangal Singh's case, where the trial cannot proceed further because of default or failure on the part of the petitioner or a party to the case to perform acts for the further progress of the proceeding, the decision will be taken to be under section 98 of the Act, and, therefore, appealable under section 116A of the Act. While the power to dismiss may be said to have been conferred by section 90(3) the order would nevertheless be under section 98, as such Order concludes the trial of the election petition. The fact that the provisions of section 99 may not have been complied with cannot change the nature of the order. As held by their Lordships of the Supreme Court in Harish Chandra Bajpai v. Triloki Singh (i), the provisions of Chapter III of the Act, read as a whole, clearly show that 'trial' is used as meaning the entire proceedings before the Tribunal from the time when the petition is transferred to it under section 86 until the pronouncement of the award. It is by the pronouncement of the award that the trial is concluded. It is immaterial whether such conclusion of the trial takes place after recording evidence on all the points in dispute or after dealing with certain points of law sufficient for the disposal of the petition. The preliminary objection, therefore, has no force. We can only note that the view taken by the Patna High Court may be contrary to what has been held by this Court, but with great respect we would prefer to follow the earlier view taken by this Court.

It may be mentioned that a writ petition, even if filed, would lie to this Court, and therefore, whether the relief is claimed in a petition entitled as memorandum of appeal, or in the alternative described as a writ petition, is not important, as remedy in either case lies by approach to this Court.

(i) A.I.R. 1957 Supreme Court 444.

In order to appreciate whether Seth Sobhag Mal Lodha was or was not a necessary party, it is necessary to mention what allegations were made with respect to the corrupt practice in the petition. The allegations made in the petition are as follows:—

- "17. That Seth Sobhag Mal Lodha of Civil Lines and Nayabazar Ajmer was one of the candidates for Parliamentary election from this constituency, his nomination was accepted, and he started the canvassing in right earnest.
18. That the respondent No. 1 made several approaches personally as well as through influential persons to induce Seth Sobhag Mal Lodha to withdraw from the contest but found that his efforts were not successful.
19. That Shri Panch Hazari, a representative of the All India Congress Committee at the instance of respondent No. 1 and on behalf of Shri U. N. Dhebar then approached Shri Seth Sobhagmal Lodha and on behalf of Shri U. N. Dhebar offered the nomination on behalf of the Congress for the seat of Rajya Sabha from Rajasthan to Seth Sobhagmal Lodha. That he further assured that Shri U. N. Dhebar would confirm the said offer personally. That said Seth Sobhagmal on the said inducement withdrew from the contest from Ajmer Parliamentary Constituency.
20. That Shri U. N. Dhebar in pursuance of the promise given by his representative Shri Panch Hazari went to the residence of Seth Sobhag Mal Lodha, and confirmed the offer of nomination for Rajya Sabha seat on behalf of the Congress. That Shri U. N. Dhebar also dined at the residence of Seth Sobhagmal Lodha.
21. That Seth Sobhagmal Lodha was so much influenced by offer of the nomination for Rajya Sabha seat made to him by the representative of Shri U. N. Dhebar, and personally confirmed by Shri U. N. Dhebar, that Seth Sobhagmal gave a sum of Rs. 10000/- to Shri U. N. Dhebar by cheque drawn from the account of Mewar Textile Mills Bhilwara.

22. That the aforesaid corrupt practice of inducing Seth Sobhagmal Lodha, was done at the instance of the respondent No. 1 by Shri Panch Hazari and Shri U. N. Dhebar".

"Corrupt practices" have been defined under section 123 of the Act, and the particular allegations come within sub-section (1) of that section. Sub-section (1) declares bribery to be one of the corrupt practices. "Bribery" is defined in the sub-section as "any gift, offer or promise by a candidate or his agent or by any other person of any gratification to any person whomsoever, with the object, directly or indirectly of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate, or to retire from contest, at an election;
- (b) an elector to vote or refrain from voting at an election, or as a reward to—
 - (i) a person for having so stood or not stood, or for having withdrawn his candidature, or for having retired from contest; or
 - (ii) an elector for having voted or refrained from voting."

A corrupt practice, according to this definition, is attributable to a person who makes a gift, or makes an offer, or makes a promise. The gift, offer or promise may be made by a candidate or his agent or by any other person. The object of this gift, offer or promise should be directly or indirectly to induce a person to stand or not to stand as, or to withdraw from being, a candidate, or to retire from contest at an election. What has been alleged in the petition is that respondent No. 1 by himself or through the influence of Panch Hazari or Shri U. N. Dhebar, made an offer to Shri Seth Sobhag Mal Lodha of his nomination for Rajya Sabha with the object of inducing him to withdraw. According to the definition these allegations impute a corrupt practice against the respondent, but do not amount to an allegation of corrupt practice against Shri Seth Sobhag Mal Lodha. It may be pointed out that in the Representation of the People Act, 1951, before amendment, there were two classes of corrupt practices—

- (1) Major corrupt practices (Sec. 123)
- (2) Minor corrupt practices (Sec. 124)

With respect to "bribery", the making of a gift, offer or promise was described as a major corrupt practice, and has been retained as a corrupt practice after the amendment, while the receipt of, or agreement to receive, any gratification, which was a minor corrupt practice under the Act, before amendment, does not find a place under the head "corrupt practices" after amendment. The acceptance of the offer is no longer a corrupt practice as defined in the Act after its amendment by Act No. XXVII of 1958.

Learned counsel for the respondents contended that bribery in any form attaches a stigma to the taker as well as to the giver, and in order to maintain the purity of the elections, the person accepting gratification, whether it is gift or in the form of offer or promise, should not be permitted to escape the consequences.

The provisions of the Representation of the People Act are concerned with the elections and their validity, and they are to be construed according to the tenor of those provisions. The laudable object of maintaining the purity of elections has been achieved by the provisions in the Penal Code, where the giving of a gratification and the acceptance of a gratification are both included as bribery according to section 171-B of the Indian Penal Code, and made punishable under section 171-E of that Code, and the conviction under section 171-E entails disqualification as provided in sections 139 and 141 of the Act.

The applicability of section 82(b) of the Act is attracted where allegations of any corrupt practice are made in the petition against any other candidate. The facts stated in the election petition amount to allegations of corrupt practice against Shri Mukat Behari Lal, but not against Shri Seth Sobhagmal Lodha, and therefore, he was not a necessary party to the petition under section 82(b) of the Act.

It was urged that under section 99(a) where, as in the present case a charge is made in the petition of any corrupt practice having been committed at the election, the Tribunal has to record a finding whether the corrupt practice has or

has not been proved to have been committed by, or with the consent of, any candidate, and that in the present case, the offer of a seat for the Rajya Sabha to Seth Sobhagmal Lodha was accepted and induced him to withdraw from the contest and thus his consent was brought about in the committing of the corrupt practice. It was urged that if the finding has to be given that the alleged corrupt practice was brought about with the consent of Seth Sobhagmal Lodha, a candidate, it would be only just that he should be a party to the proceedings, and that is why the law has laid down that the other candidate so involved should be made a party to the petition.

The argument, though plausible, is fallacious. Section 82(b) is only applicable if the allegation of corrupt practice is made against any candidate. As stated above, the allegation of bribery could not be said to have been made against Seth Sobhagmal Lodha. What is corrupt practice has to be seen by reference to section 123 of the Act. Section 99 itself makes a provision for a finding to be given against the persons who are not parties to the petition, and the procedure provided is mentioned in the proviso for giving notice to the said person to show cause why he should be named. The names are to be recorded of persons who are guilty of any corrupt practice, which is defined in section 123 of the Act. We are, therefore, again led to the provisions of section 123, and if the act of the candidate does not come under section 123, he is not a necessary party according to section 82(b) of the Act. The consequences referred to in section 90(3) can only be brought about where the necessary party under section 82 is not impleaded. Whatever may be the interpretation of section 99, about which we express no opinion, it is quite clear in the present case that the allegations mentioned in the petition do not amount to allegations of corrupt practice by the other candidate Seth Sobhagmal Lodha, and he was not a necessary party. It may be mentioned that the allegations of payment of Rs. 10,000/- as an inducement for nomination of Seth Sobhagmal Lodha in future for the Rajya Sabha is not relevant in an election petition relating to the present election in dispute. Whether the election to Rajya Sabha would or would not suffer from any defect on the allegations, if proved to be correct, is not a matter to be gone into in this election petition. The order of the Election Tribunal is not correct, and must be set aside.

We, therefore, allow the appeal, and set aside the order of the Election Tribunal dated 12th November, 1957, in the present case. Intimation of this order will be sent to the Election Commission for such directions as to the trial of this petition as may be necessary. The respondents will pay costs to the appellant.

(Sd.) K.L.B.

(Sd.) D.M.B.

[No. 82/230/57/10004.]

By Order,
DIN DAYAL, Under Secy.

